IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 579 of 2007
Date of decision: 20.03.2007

Ramesh Kumar and another

..... Petitioners.

Versus

Gama

..... Respondent.

CORAM: HON'BLE MR. JUSTICE M.M. AGGARWAL

Present:- Ms. Swati Gupta, Advocate
for the petitioners.

Mr. Ritesh Pandey,Advocate
for the respondent.

M.M.AGGARWAL, J. (ORAL)

This is petition against the order dated 14.12.2006 of Additional District Judge, Gurdaspur whereby an application for restoration of the appeal filed by the present petitioners was dismissed.

The facts of the case are that suit of the plaintiff now petitioners was dismissed. Then an appeal was filed, which was dismissed in default on 30.01.2002 by Aditional District Judge, Gurdaspur. Thereafter, an application for restoration of the appeal was filed on 28.02.2002, which was also dismissed by Additional District Judge, Gurdaspur.

The contention of counsel for the petitioner-appellants was that they had noted down the date as 30.02.2002 in the diary. Therefore, they could not appear in the Court on 30.01.2002.

On behalf of the respondent, it is argued that there could be no date as 30.02.2002 in the diary and as such no note could be done by counsel for the appellant- petitioners. It is also argued that if that was so, then no application for restoration could have been presented on 20.02.2002.

Even if it may be so, it would be proper that the appeal be heard on merits. Opposite party can be compensated with costs.

Accordingly, petition is allowed. Order dated 14.12.2006 passed by Additional District Judge, Gurdaspur is set aside. However, plaintiff-petitioners shall be liable to pay Rs.3000/- as costs to the opposite party. Parties to appear in the first Appellate Court on 24.04.2007. There costs shall be paid and then appeal shall be restored and heard on merits.

March 20, 2007 **(M.M. AGGARWAL)**
Dinesh **JUDGE**